

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EMPIRE STATE CARPENTERS WELFARE,  
PENSION ANNUITY, APPRENTICESHIP,  
CHARITABLE TRUST, LABOR MANAGEMENT  
COOPERATION, AND SCHOLARSHIP FUND and  
their Trustees, DALE STUHLMILLER, TODD  
HELFRICH, PATRICK MORIN, DOUG O'CONNER,  
JOHN O'HARE, JOHN DELOLLIS, CHRIS  
FUSCO, ALAN EHL, WILLIAM MACCHIONE,  
WILLIAM BANFIELD, JAMES MALCOLM,  
STANLEY TURTENWALD, ROSS PEPE, ALAN  
SEIDMAN, LLOYD MARTIN, LARRY THAYER,  
WILLIAM WEIR, DAVID HAINES, FRANK WIRT,  
TOM BURKE, JAMES LOGAN, FRANK JONES,  
AARON HILGER, ANGELO MASSARO and  
JAMES HOLLEY,

MEMORANDUM & ORDER  
10-CV-1634(JS)(AKT)

Plaintiffs,

-against-

A-PLUS FLOORING, INC.,

Defendant.

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APPEARANCES

For Plaintiffs: Owen M. Rumelt, Esq.  
Levy Ratner P.C.  
80 Eighth Avenue, 8th Floor  
New York, NY 10011-5126

For Defendant: No appearances.

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R"), issued on August 26, 2011. For the following reasons, the Court ADOPTS this R&R in its entirety.

BACKGROUND

Plaintiffs commenced this action on April 13, 2010

seeking payment of unpaid and delinquent contributions, interest, liquidated damages, attorneys' fees and costs pursuant to Section 15 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1145. Although Defendant executed a waiver of service (Docket No. 2), it did not answer the Complaint or otherwise appear in this action. Plaintiffs moved for an entry of default on June 23, 2010 (Docket No. 3), which was entered by the Clerk of the Court on June 24, 2010 (Docket No. 4). On November 16, 2010, Plaintiffs moved for default judgment and an award of damages (Docket No. 5), and on November 23, 2010, the Court referred Plaintiffs' motion to Judge Tomlinson (Docket No. 7).

Judge Tomlinson issued an R&R on August 26, 2011 recommending that a default judgment be granted that Plaintiffs be awarded \$162,721.57, broken down as follows: (1) unpaid fringe benefit contributions in the amount of \$53,635.88; (2) interest on the unpaid fringe benefits in the amount of \$94,958.05; (3) liquidated damages in the amount of \$10,727.18; (4) attorneys' fees and costs in the amount of \$3,400.46.

No party has objected to any portion of Judge Tomlinson's R&R.

#### DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and

recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Here, no party objected to Judge Tomlinson's R&R. And the Court finds her R&R to be correct, comprehensive, well-reasoned and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

#### CONCLUSION

Judge Tomlinson's R&R is ADOPTED in its entirety. Plaintiffs are awarded a default judgment and damages in the following amounts:

- (1) \$53,635.00 in unpaid fringe benefits;
- (2) \$94,958.05 in interest on the unpaid fringe benefits;
- (3) \$10,727.18 in liquidated damages; and
- (4) \$3,400.46 in attorneys' fees and costs.

The Clerk of the Court is directed to enter a Judgment consistent with this Order.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: September 20, 2011  
Central Islip, NY